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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/888,345

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Michael Gary Platner

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64046

7590

12/11/2008

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
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EXAMINER

MISIASZEK, MICHAEL

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/888,345	Applicant(s) PLATNER ET AL.	
	Examiner Michael Misiaszek	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-36 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-36 and 38-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/8/08</u> . | 6) <input type="checkbox"/> Other: _____ |

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Prosecution Status

Applicants amendments filed 8/8/2008 have been received and reviewed. The status of the claims is as follows:

Claims 32-36, 38-40 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 32-34,38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messner in view of Hinrichs, White , and Richardson (US 20020022962 A1)

Regarding Claim 32, 34, 39

Messner discloses a method comprising the steps of:

- receiving payment from a purchaser for a certificate for an online product of a vendor, said certificate comprising an authorization code having at least one characteristic that identifies said purchaser (at least column 6, lines 24-40: purchase pays for monetary value of certificate, certificate comprises account number which can be used to identify purchaser)
- providing said certificate in a physical form to said purchaser (at least column 11, lines 10-20: purchaser may receive physical gift card)
- providing said online product to said user in response to entry of said authorization code (at least column 10, lines 14-58: product delivered when account number verified and transaction completed)

Messner does not explicitly disclose:

- receiving entry of said authorization code on a web site via which said online product can be obtained, wherein said authorization code is entered on said web site by a user to whom said certificate has been transferred from the purchaser
- determining the identity of said purchaser from the authorization code received from said user
- providing said certificate to an intermediate purchaser
- the certificate purchased at a price by a user greater than the price at which the intermediate purchaser purchase the certificate
- upon granting authorization access, generating an on-line memorial for a deceased person

Hinrichs teaches that it is known to include receiving an authorization code on a web site (at least paragraph [0065]: user enters award code on merchant site) and determining the identity of the purchaser from the authorization code (at least paragraph [0066]: reports sent to award account provider; identity of provider must be determined in order to send report) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method of Messner with the authorization code entry and purchaser identification, as taught by Hinrichs, since such a modification would have provided more efficient management of gift accounts (at least paragraph [0066] of Hinrichs).

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White teaches that it is known to provide certificates for products to an intermediate purchaser (at least abstract: prepaid phone cards sold to retail establishments) and to sell the certificate to a user at a higher price (at least figure 10: retail price greater than wholesale price) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and method, as taught by Messner, with the intermediate purchaser and prices, as taught by White, since such a modification would have provided a more efficient system of distributing pre-paid inventories at a point-of-sale through automation of tracking of the sales of such inventories (at least column 2, lines 7-39 of White).

Richardson teaches that it is known to include granting access to generate an on-line memorial for a deceased person (at least abstract) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention, as taught by Messner, with the on-line memorial, as taught by Richardson, since such a modification would have only united elements of the prior art references, with no change in their respective functions and which yield predictable results.

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Regarding Claims 33, 37, 38

Messner discloses:

- said certificate designates a specific online product of the vendor to be provided to the user (at least column 3, lines 20-26: direct recipient to specific product)
- said certificate entitles the user to obtain the online product at a reduced fee (at least column 6, lines 59-67: discounts can be applied)

Regarding Claim 40

Messner does not expressly disclose that the average first price is zero.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The receiving steps would be performed in the same manner regardless of the value of the average first price. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.23d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the certificate at any average first price because such information does not functionally relate to the steps in the method claimed and merely pricing the certificate differently from that in the prior art would have been obvious. See *Gulack* cited above.

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3. Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messner in view of Hinrichs, White, and Richardson as applied to claim 32 above, and further in view of Dixon.

Messner and Hinrichs disclose the claimed invention except for:

- said certificate is made of paper and comprises multiple pages of material

Dixon teaches that it is known to include a paper certificate comprising multiple pages (at least paragraph [0065]: coupon booklet made of paper and has multiple sheets) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Messner, with the certificate made of paper and having multiple pages, as taught by Dixon, since such a modification would have provided a booklet having a plurality of items with information identifiable with a single bar code (at least paragraph [0011] of Dixon).

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Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Misiaszek whose telephone number is (571)272-6961. The examiner can normally be reached on 9:00 AM - 5:30 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
Unit 3625

Michael A. Misiaszek
Patent Examiner
12/8/2008